Ravintharan a/l Perumal v Kuppusamy a/l Aiyasamy

HIGH COURT (IPOH) — CIVIL APPEAL NO 11–66 OF 2003
VT SINGHAM J
3 FEBRUARY 2005

Civil Procedure — Appeal — Notice of Appeal — Appeal to High Court where judgment sum did not exceed RM10,000 — Magistrate dismissing notice of appeal for lack of question of law — Whether questions of law in notice of appeal necessary — Whether magistrate can determine question or questions of law posed against his own decision — Revisionary powers of High Court — Courts of Judicature Act 1964 s 28(1) — Rules of the Subordinate Courts 1980 O 49

The appellant applied to the High Court to exercise its revisionary powers wherein a notice of appeal that was filed at the magistrate's court was rejected by the learned magistrate. The reason given by the learned magistrate for rejecting the notice of appeal was that the amount in dispute was less than RM10,000 and that there was no question of law in respect of the decision for the High Court to decide.

Held:

(1) The notice of appeal filed at the lower court by an aggrieved person pursuant to O 49 of the Subordinate Court Rules 1980 need not set out the question or questions of law which is necessary for the appeal as the notice of appeal which was filed was in compliance with the statutory Form 140 of the Subordinate Court Rules 1980 (see para 20): *Neoh Choo Ee & Co Sdn Bhd v Vasalamany a/l Govindasamy & Anor* [2004] AMR 357; *Sulaiman bin Mohamad v Malayan Banking Bhd* [1992] 2 MLJ 116 not followed.

(2) The learned magistrate cannot himself determine question or questions of law posed against his own decision because his decision in the instant case was made upon hearing of the evidence and full arguments on the facts and the law which was applied to the facts (see para 20).

(3) Upon giving his decision on the merits of the case, the learned magistrate was *functus officio* to decide question or questions of law posed to determine his own decision after he had delivered his decision upon full trial (see para 20).

(4) Even assuming that the provision in s 28(1) of the Courts of Judicature Act 1964 was unclear as to who has to decide, ie, whether the lower court or the High Court on the question of law, that ambiguity even if it exist, in accordance with the rules of construction, must be decided in favour of the aggrieved party, ie, the question of law has to be decided by the High Court at the outset of the appeal and cannot be determine by the magistrate himself. Competency or incompetency of the appeal

on the ground that the appeal did or did not involved question or questions of law was for the High Court to decide and the respondent could or was at liberty to raise preliminary objection at the outset of the hearing of the appeal (see para 26).

[**Bahasa Malaysia summary**

Perayu memohon kepada Mahkamah Tinggi untuk menggunakan kuasa budi bicaranya di mana satu notis rayuan yang telah difailkan di mahkamah majistret telah ditolak oleh majistret yang arif itu. Sebab yang dikemukakan oleh majistret yang arif itu dalam menolak notis rayuan itu adalah bahawa jumlah yang dipertikaikan adalah kurang daripada RM10,000 dan tidak terdapat apa-apa persoalan undan-undang berdasarkan keputusan itu untuk diputuskan oleh Mahkamah Tinggi.

Diputuskan:

(1) Notis rayuan yang difailkan di mahkamah rendah oleh seorang terkilan menurut A 49 Kaedah-Kaedah Mahkamah Rendah 1980 tidak perlu menyatakan persoalan undang-undang untuk rayuan itu kerana notis rayuan yang difailkan sudah mematuhi borang 140 statutori Kaedah-Kaedah Mahkamah Rendah 1980 (lihat perenggan 20); *Neoh Choo Ee & Co Sdn Bhd v Vasalamany a/l Govindasamy & Anor* [2004] AMR 357; *Sulaiman bin Mohamad v Malayan Banking Bhd* [1992] 2 MLJ 116 tidak diikuti.

(2) Majistret yang arif tidak boleh menimbangkan persoalan undang-undang terhadap keputusannya sendiri kerana keputusannya sendiri dalam kes ini telah diputuskan setelah mendengar keterangan dan penghujahan penuh atas fakta dan undang-undang mengenai fakta kes (lihat perenggan 20).

(3) Setelah memutuskan keputusannya di atas merit kes, majistret yang arif adalah *functus officio* untuk menimbangkan persoalan undang-undang di hadapannya berkenaan dengan keputusannya selepas dia menyampaikan keputusannya selepas pembicaraan penuh (lihat perenggan 20).

(4) Walaupun jika dianggap bahawa peruntukkan di s 23(1) Akta Mahkamah Kehakiman 1964 tidak jelas mengenai siapa sepatutnya memutuskan, iaitu sama ada mahkamah rendah atau Mahkamah Tinggi, persoalan undang-undang, bahawa ketaksaan walaupun wujud, mengikut rukun tafsiran, hendaklah diputuskan memihak pihak terkilan, iaitu, persoalan undang-undang harus diputuskan oleh Mahkamah Tinggi pada mula rayuan itu dan tidak boleh diputuskan oleh magistret sendiri. Isu kesahihan rayuan atas sebab ia tidak melibatkan persoalan undang-undang sepatutnya diputuskan oleh mahkamah tinggi dan responden boleh membangkitkan bantahan permulaan pada pemula pembicaraan rayuan itu (lihat perenggan 26).]

Notes

For cases on notice of appeal, see 2(1) *Mallal's Digest* (4th Ed, 2001 Reissue) para 1095–1100.

Cases referred to

All Persons In Occupation of the House and the wooden stores erected on a portion of land held under grant no 26977 for Lot 4271 in the township of Johor Bahru, Johor v Puncak Klasik Sdn Bhd [1996] 4 MLJ 533 (refd)
Ang Poh Chuan v PP [1996] 3 SCR 326 (refd)
Austral Amalgamated Tin Bhd and another appeal v Abdul Wahab bin Kopon & Ors and another appeal [2004] 3 AMR 298 (refd)
Close v Steel Co of Wales Ltd [1962] 2 All ER 953 (refd)
Dorai Manickam Alias Davies v Rex [1937] MLJ 209 (refd)
Hock Hua Bank Bhd v Sahari bin Murid [1981] 1 MLJ 143 (refd)
House Property and Investment Co Ltd, Re [1953] WLR 1034 (refd)
Huddersfield Police Authority v Watson [1947] All ER 193 (refd)
Jones v Curling 13 QBD 262 (refd)
Kannaya & Anor v Teh Swee Eng [1994] MLJ 508 (refd)
KC Chan Brothers Development Sdn Bhd v Tan Kon Seng & Ors [2001] 6 MLJ 636 (refd)
Liaw Kwai Wah & Anor v PP [1987] 2 MLJ 69 (refd)
London Tramways v London Country Council [1895] AC 375 (refd)
Mahabir Singh v Emperor AIR 1944 Cal 17 (refd)
Malayan Banking Bhd v Syed Ali bin Mohsin [1991] 3 CLJ 289 (refd)
Mohamad Safuan bin Wasidin & Anor v Mohd Ridhuan bin Ahmad (an infant) [1994] 2 MLJ 187 (refd)
Mohd Dalha bin Redzwan & Anor v Datuk Bandar, Dewan Bandaraya, Kuala Lumpur [1995] 1 MLJ 645 (refd)
Neoh Choo Ee & Co Sdn Bhd v Vasalamany a/l Govindasamy & Anor [2004] AMR 357 (not folld)
Ngian Chin Boon v PP [1999] 1 SCR 119 (refd)
Osborne v Rowlett (1880) 13 Ch D 774 (refd)
Pandan Maju Sdn Bhd v Dulon Industries Sdn Bhd [1996] 3 AMR 3151 (refd)
Periasamy s/o Sinnappan & Anor v PP [1996] 2 MLJ 557 (refd)
PN Mohamed Ibrahim v Yap Chin Hock & Anor [1954] MLJ 127 (refd)
PP v Mohamed Noor Bin Adbul Majed [2000] 3 SCR 17 (refd)
R v West Kent Quater Sessions Appeal Committee [1951] 2 All ER 728 (refd)
R v Chaji Ram [1934] MLJ 6 (refd)
R v Nasrullah (1928) 108 IC 567 (refd)
R v Retnam [1934] SLR 48 (refd)
Radha Krishna Naidu, Re [1962] MLJ 130 (refd)
Rajendran a/l M Gurusamy v PP [2000] 4 MLJ 639 (refd)
Ramanathan Chettiyar v K Sivarama Subrahmanya Ayyar ILR 47 Mad 722 (refd)
Saadian bte Karim v Ong Ting Chai [1996] 5 MLJ 646 (refd)
Shribadg G Chandavarka, Re ILR 52 Bom 151 (refd)
Soo Leot, Re [1956] MLJ 54 (refd)
Sulaiman bin Mohamad v Malayan Banking Bhd [1992] 2 MLJ 116 (not folld)
Sundralingam v Ramanathan Chettiar [1967] 2 MLJ 211 (refd)

Teo Hee Heng v PP [2000] 3 SCR 168 (refd)
Teo Hee Heng v Public Prosecutor [2000] 3 SCR 168 (refd)
Tiang Kwong Ee v Ing Kai Hong (S) Sdn Bhd [2000] 5 MLJ 756 (refd)
Tunde Apatira & Ors v PP [2001] 1 MLJ 259 (refd)
Young v British Aeroplane Co Ltd [1944] 2 All ER 293 (refd)
Zain Azahari bin Zainal v Wearne Brothers (1983) Sdn Bhd [1997] 5 MLJ 39 (refd)

Legislation referred to

Courts of Judicature Act 1964 ss 28(1), 32, 33, 34, 36, 49
Subordinate Court Rules 1980 O 49, 55

Prema Geeta (Prema, Bala, Habeb Rahman & Associates) for the appellant/defendant.
Manjit Singh Mann (Manjit Singh Mann & Co) for the respondent/plaintiff.

VT Singham J:

[1] By a letter dated 10 February 2004, the appellant/defendant's solicitors applied to this court to exercise its revisionary powers wherein the notice of appeal dated 19 November 2003 filed on 21 November 2003 at the magistrate's court was rejected by the learned magistrate by a letter dated 8 December 2003 by extending a copy of the said letter to the senior assistant registrar of the High Court and the plaintiff's solicitors. The reason given by the learned magistrate for rejecting the notice of appeal was that the amount in dispute was less than RM10,000 and that there was no question of law in respect of the decision for the High Court to decide. The notice of appeal was filed by the defendant's solicitors against the decision of the learned magistrate wherein on 7 November 2003 he allowed the plaintiff's claim being RM6,650 with costs in respect of a loan given to the defendant.

[2] It is important to state that after the notice of appeal was filed on 21 November 2003, the registrar of the magistrate's court by a letter dated 4 December 2003 forwarded a copy of the notice of appeal to the registrar of the High Court with a carbon copy of the letter to both the solicitors for the defendant and the plaintiff. It is stated in the said letter that the grounds of the judgment will be ready by 16 January 2004. By a letter dated 10 January 2004, the senior assistant registrar of the High Court informed the registrar of the magistrate's court, Ipoh that the notice of appeal has been registered at the High Court, Ipoh vide Civil Appeal No 11–66–03 and extended a copy of the letter to both the solicitors for the plaintiff and the defendant. For the sake of brevity and convenience the letters dated 4 December 2003 (with a copy of the notice of appeal) and 8 December 2003 is included in this judgment which reads as follows:

Mahkamah Sesyen & Majistret, Tel: 2415555
Jalan Panglima Bukit Gantang Wahab, 2415669
30000 Ipoh, 2418669
Perak Darul Ridzuan.

Bil (2) dlm Rayuan Sibil No 37/2003
Tarikh: 4 Disember 2003

Timbalan Pendaftar,
Mahkamah Tinggi,
Ipoh.

Tuan,

Mahkamah Majistret No 2 Ipoh,
Kes Sivil No 72–2444–2001
Ravintharan a/l Perumal lwn Kuppusamy a/l Aiyasamy

Saya majukan bersama-sama ini satu salinan notis rayuan yang diterima daripada peguambela bagi pihak yang merayu beserta dengan butir-butir seperti dibawah ini:

(a) Nama mahkamah: Mahkamah Majistret No 2 Ipoh,

(b) Tarikh bila hukuman diberi: 7 November 2003

(c) Tarikh bila notis rayuan diterima: 21 November 2003

(d) Tarikh bila alasan hukuman mesti disiapkan untuk penyediaan rekod rayuan (enam minggu selepasnya): 16 Januari, 2004

(e) Tarikh bila rekod rayuan dijangka dapat dihantar ke Mahkamah Tinggi:

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PENDAFTAR KANAN/MAJISTRET
IPOH

sk 1 Tetuan Prema Bala, Habeeb Rahman & Associates,
Peguamcara & Peguambela,
No 20 (C), Tingkat Satu,
Jalan Market,
30000 Ipoh.

[Ruj Tuan: P/CIV/365/01/D]

2 Tetuan Manjit Singh Mann & Co,
Peguambela & Peguamcara,
Room B, 1st Floor,
No 1, Jalan Sultan Idris Shah,
30000 Ipoh.

[Ruj. Tuan:]

DALAM MAHKAMAH TINGGI DI IPOH

RAYUAN SIVIL NO TAHUN 2003

ANTARA

RAVINTHARAN A/L PERUMAL … PERAYU

DAN

KUPPUSAMY A/L AIYASAMY … RESPONDEN

(Dalam Perkara Mengenai Mahkamah Majistret Di Ipoh Saman No 72–2444–2001)

ANTARA

KUPPUSAMY A/L AIYASAMY … PLAINTIF

DAN

RAVINTHARAN A/L PERUMAL … DEFENDAN

NOTIS RAYUAN

AMBIL PERHATIAN bahawa Ravintharan A/L Perumal, perayu yang dinamakan diatas tidak berpuashati dengan keputusan Majistret, Mahkamah Majistret No 2, yang diberikan pada 7 Disember 2003 merayu kepada Mahkamah Tinggi di Ipoh terhadap keseluruhan keputusan itu diatas perkara undang-undang dan fakta seperti berikut:

1 Samada tandatangan pada IOU (P–1) merupakan tandatangan perayu atau tandatangan yang dipalsukan oleh orang lain.

2 Samada fakta bahawa perayu adalah seorang yang buta huruf boleh mengisikan butir-butir dalam IOU (P–1) tersebut.

3 Samada 'guideline principles' bagi tandatangan oleh seorang buta huruf yang dikemukakan dalam kes *Haji Osman v Ng Ah Siew* [1939] MLJ 24 dipertimbangkan oleh majistret yang bijaksana semasa membuat keputusan dalam kes ini.

4 Samada fakta bahawa saksi-saksi utama seperti anak responden yang mengisi perjanjian persahabatan tidak dipanggil untuk memberi keterangan diambilkira oleh majistret yang bijaksana.

5 Kegagalan responden untuk mengemukakan saksi-saksi untuk menunjukkan wujudnya persahabatan selama sepuluh (10) tahun diantara responden dan perayu.

6 Samada fakta bahawa tiada saksi bebas telah dikemukakan oleh responden untuk menunjukkan bahawa perayu telah membayar RM2,150 kepada responden walaupun responden telah menyatakan bahawa kawan-kawannya ada bersamanya bila perayu membuat bayaran sebanyak RM25150.

7 Samada majistret telah betul-betul mempertimbangkan keterangan SP2 (isteri responden) atas fakta-fakta berikut:

a) SP2 adalah buta huruf dan telah memberi keterangan bahawa SP2 tidak mengira wang sebanyak RM8,700 apabila responden memberikan wang tersebut kepada perayu.

(b) SP2 tidak mengetahui tujuan wang sebanyak RM8,700 diberikan kepada perayu.

(c) Bagaimanakah SP2 dapat menentukan bahawa dokumen yang ditandatangani adalah suatu dokumen IOU dan juga bagaimana rupa IOU tersebut memandangkan SP2 adalah buta huruf.

(d) Memandangkan tranksaksi ini berlaku lebih kurang tujuh tahun yang lalu, adakah keterangan SP2 satu keterangan yang telah diajar, dan/atau dihasut supaya berpihak kepada pihak plaintif.

(e) Majistret yang bijaksana juga mempertimbangkan bahawa hanya terdapat seorang saksi bagi responden iaitu SP2 (isteri responden) suatu 'interested witness' dan tiada lagi 'saksi bebas' (independent witness) yang datang memberi keterangan.

8 Adakah dokumen perjanjian persahabatan yang ditandakan sebagai 'ID–2' suatu dokumen 'On Demand' iaitu suatu promissory note yang perlu disetem sebelum atau pada masa ditandatangani seperti yang diperuntukkan didalam Akta Setem 1949 dan apakah kesannya sekiranya ianya tidak disetemkan.

9 Samada majistret telah betul dan tepat mengkaji dokumen IOU (P–l) dimana IOU ini merupakan basis kes ini. IOU ini hanya mengatakan bahawa perayu berhutang sebanyak RM8,700. IOU tersebut tidak mengatakan perayu berhutang duit sebanyak RM8.700 kepada responden.

10 Samada majistret yang bijaksana telah mempertimbangkan fakta bahawa dokumen-dokumen ini merupakan dokumen yang diguna oleh pemberi pinjam wang berlesen semasa menentukan kes ini.

Bertarikh pada 19 November 2003.

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TETUAN PREMA, BALA,
HABEEB RAHMAN & ASSOCIATES
PEGUAMCARA UNTUK PERAYU

Kepada:

1 Majistret
Mahkamah Majistret (No 2)
Ipoh, Perak Darul Ridzuan.

2 Tetuan Manjit Singh Mann & Co
Peguambela & Peguamcara Room B, 1st Floor,
No 1, Jalan Sultan Idris Shah,
30000 Ipoh, Perak Darul Ridzuan.

Dan Kepada:

Responden yang diatas,
Kuppusamy A/L Aiyasamy
No. 54, Lengkok Bercham Timur 4,
Taman Pakatan, 31400 Ipoh,
Perak Darul Ridzuan.

Notis Rayuan ini difailkan oleh Tetuan Prema Bala, Habeeb Rahman & Associates, Peguamcara Defendan yang beralamat di No 20(C), Tingkat Satu, Jalan Market, 30000 Ipoh, Perak Darul Ridzuan. (No Tel: 05–2432535/No Fax: 05–2432536)

MAHKAMAH SESYEN & MAJISTRET,
JALAN PANGLIMA BUKIT GANTANG WAHAB,
30000 IPOH,
PERAK DARUL RIDZUAN Tel 05–2415555

Tarikh: 8 Disember 2003

Tetuan Prema, Bala, Habeeb Rahman & Associates,
Peguambela & Peguamcara,
No 20 (C), First Floor,
Jalan Market,
30000 Ipoh.

(Ruj Tuan: P/CIV/382/01/D)

Tuan,

Kes Sibil Mahkamah Majistret 272–2444–2001

Kuppusamy a/l Aiyasamy lwn Ravintharan a/l Perumal

Adalah saya dengan hormatnya merujuk kepada notis rayuan yang difailkan oleh pihak Tetuan pada 21 November 2003 mengenai perkara diatas.

2 Mengikut peruntukan Seksyen 28 Akta Mahkamah Kehakiman (Courts of Judicature Act) 1964, adalah jelas bahawa tiada sebarang rayuan boleh dibuat terhadap sebarang keputusan Mahkamah sekiranya tuntutan yang terlibat kurang daripada RM10,000.00 kecuali diatas soal perundangan.

3 *Setelah meneliti notis rayuan yang difailkan, mahkamah mendapati bahawa ia tidak mendedahkan sebarang soal perundangan yang harus diputuskan oleh pihak Mahkamah Tinggi.* Dengan yang demikian. Mahkamah berkeputusan bahawa notis rayuan yang difailkan tersebut terpaksa ditolak. (Emphasis added.)

4 Walaubagaimanapun notis permohonan tetuan untuk penggantunggan perlaksanaan penghakiman akan didengar mengikut tarikh yang ditetapkan nanti.

Sekian, terima kasih.

BERKHIDMAT UNTUK NEGARA

Saya yang menurut perintah,

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(TEOH CHIN CHONG)
Majistret,
Mahkamah Majistret No 2,
Ipoh.

sk 1 Penolong Kanan Pendaftar,
Mahkamah Tinggi Ipoh.

2 Tetuan Manjit Singh Mann & Co.,
Peguambela & Peguamcara,
Room B, 1st Floor,
No 1, Jalan Sultan Idris Shah,
30000 Ipoh.

[3] This court after having called for the file from the magistrate's court, Ipoh and having gone through the records was satisfied that this was a case where it was justified and urgently demanded in the interests of justice that proceeding by way of revision be entertained 'to secure that substantial justice is done'. (See *Mahabir Singh v Emperor* AIR 1944 Cal 17 (FB). This court then fixed a date for hearing this civil revision to hear both parties. (See ss 32, 33, 34 and 36 of the Courts of Judicature Act 1964). The civil revision was heard on 8 November 2004 under the heading of the civil appeal since the appeal has already been registered at the High Court, Ipoh and is still pending.

POWERS OF REVISION

[4] The powers of the High Court in revision are exercisable at the discretion of the court and that discretion is left untrammelled and free, so as to be fairly exercised according to the exigencies of each case. See *Re Soo Leot* [1956] MLJ 54 at p 55 where His Lordship Buhagiar J observed:

> … I am not aware than in practice the courts of this country have laid down any rules which confine the discretion given by law in a manner in which the legislature has not seen fit to confine it. The principles which should guide the courts in the exercise of the revisionary powers have been clearly set out by Jenkins CJ in *R v Lachiram*, where at p 566 he observed:
>
> > If we have been entrusted with the responsibility of a wide discretion, we should be the last to attempt to fetter that discretion, and whenever it is argued that judicial decision has deprived us of the power that the legislature has given us, I recall the words of an eminent English judge: 'I desire to repeat', he said, 'what I have said before, that this controlling power of the court is a discretionary

power and it must be exercised with regard to all the circumstances of each particular case, anxious attention being given to the said circumstances, which vary greatly. For myself, I say emphatically that this discretion ought not to he crystallised, as it would become in course of time, by one judge attempting to prescribe definite rules with a view to hind other judges in the exercise of the discretion which the legislature has committed to them. This discretion, like all other judicial discretions ought, as far as practicable, to be left untrammelled and free, so as to be fairly exercised according to the exigencies of each case'. These weighty words appear to me to breathe the spirit that should guide us in the exercise of our discretionary powers of revision. This may perhaps increase our responsibilities and add to our labours, but no one would shirk the one or grudge the other.

(See *Dorai Manickam alias Davies v Rex* [1937] MLJ 209, *Lee Yu Fah & 5 Ors v Public Prosecutor* [1937] 6 MLJ (FMSR) 179, *Re Ng Kang Lim* [1962] MLJ 39, *Re Radha Krishna Naidu* [1962] MLJ 130, *Re Pichi Muthu* [1970] 2 MLJ 143, *Public Prosecutor v Tanggaah* [1972] 1 MLJ 207, *Hari Ram Seghal v Public Prosecutor* [1981] 1 MLJ 165, *Liaw Kwai Wah & Anor v Public Prosecutor* [1987] 1 CLJ 35, [1987] 2 MLJ 69, *Seok Mee Seong v Abdul Wahab Bin Abdul Rahman* [1989] 1 MLJ 193 and *Mohd Dalha bin Redzwan & Anor v Datuk Bandar, Dewan Bandaraya, Kuala Lumpur* [1995] 2 CLJ 209 at p 218).

The only jurisdiction of any court is a jurisdiction to do justice according to law and, to that extent, the court is not 'competent' to make any order not justified by law. (*Dorai Manickam alias Davis v Rex* [1937] MLJ Rep 209 at p 210).

[5] The discretionary powers of the High Court in revision should be exercised primarily for the purposes of correcting a miscarriage of justice (See *Liaw Kwai Wah & Anor v Public Prosecutor* [1987] 2 MLJ 69, *Re Radha Krishna Naidu* [1962] MLJ 130, *Rajendran a/l M Gurusamy v Public Prosecutor* [2000] 4 MLJ 639) or where it considers that in doing so, the purposes of justice will be served (See *Ramanathan Chettiyar v K Sivarama Subrahmanya Ayyar* ILR 47 Mad 722, In *Re Shribadg G Chandavarka* ILR 52 Bom 151) or when no appeal lies to the High Court is capable of revision (See *Mahabir Singh v Emperor* AIR 1944 Cal 17 (FB), *R v Nasrullah* (1928) 108 IC 567) or some serious injustice has been caused which justifies the exercise of its power. (See *R v Retnam, R v Chaji Ram* [1934] SLR 48, [1934] MLJ 6, *Ang Poh Chuan v Public Prosecutor* [1996] 3 SCR 326, *Ngian Chin Boon v Public Prosecutor* [1999] 1 SCR 119, *Teo Hee Heng v Public Prosecutor* [2000] 3 SCR 168, *Public Prosecutor v Mohamed Noor Bin Adbul Majed* [2000] 3 SCR 17).

[6] However, it is important to note that it is not desirable or possible to lay down hard and fast rules as to when this court will or will not exercise its powers of revision under s 32 of the Courts of Judicature Act 1964, Each case must be decided according to its own set of facts and circumstances. In *Jones v Curling* 13 QBD 262 at p 271, Bowen LJ said:

I have always entertained the strongest opinion that the court would be acting *ultra vires* if it were to lay down a hard and fast line upon which discretion should be exercised when the Act of Parliament or Judicature rule which creates the discretion given it in ample and unqualified terms. (See *The Friedeberg* 10 P 112 at p 113)

[7] It may, however, be laid down as a broad and general rule that where a party to civil proceedings has had the opportunity to appeal under O 49 of the Subordinate Court Rules 1980 but neglects, without very good reasons so to do he will not be allowed to invoke the provisions of s 32 of the Courts of Judicature Act 1964 and moreover, where it is proper that that application be made to the court to exercise its powers under that section the application should be made at the first possible moment and not merely as a forlorn hope after other methods of procedure have been unsuccessfully adopted. (See *Dorai Manickam Alias Davies v Rex* [1937] MLJ 209 at p 213).

There can be no doubt about the jurisdiction of the High Court to interfere in revision either on the application of one of the parties or on its own motion. In appropriate cases, the High Court does and should interfere to set aside the orders. (*Re Pichi Muthu* [1970] 2 MLJ 143).

The power of revision has been exercised from time to time by the High Court in order to correct any imbalance of justice arising from judgments and orders of the subordinate courts.

The object of these provision is to correct any miscarriage of justice arising not only from error in judgment and procedure but from neglect or indolence on the part of those in authority and resulting in undeserved hardship on any individual affected by such judgment, neglect or indolence.

The persons appearing in our courts have the right to expect the best quality of justice and nothing less. Any mistake or flaw in that machinery, which may have the possibility of injustice, must be resolved in their favour (*Hart Ram Seghal v Public Prosecutor* [1981] 1 MLJ 165 at p 166–167)

The powers of the High Court in civil revision are amply provided under s 32 of the Courts of Judicature Act 1964. The object of re visionary powers of the High Court is to confer upon the High Court a kind of 'paternal or supervisory jurisdiction' in order to correct or prevent a miscarriage of justice.

(See *Janagi v Ong Boon Kiat* [1971] 2 MLJ 196, *Tay Choon & Ors v Jeet Kaur* [1972] 1 MLJ 216, *Samwak Government v KCS Sawmill Sdn Bhd* [1990] 2 MLJ 371 at p 373, *Saadian Bte Karim v Ong Ting Chai* [1996] 5 MLJ 646 at pp 662–663).

In a revision, the main question to be considered is whether substantial justice has been or will be done and whether any order made by the lower court should be interfered with in the interest of justice (*Public Prosecutor v Kulasingam* [1974] 2 MLJ 26).

I always am, as any other judge always is, happy to see members of the Bar come and bring their complaints so that the administration of justice in our courts may

improve and its defects, if any remedied. I, in fact look for and beseech their help, assistance and co-operation. It was purely in that spirit of having the utmost co-operation and moved by the desire that no member of the Bar should have any cause for a just grievance against any presiding officer of a court that I decided to call for this record. I am conscious, sadly and regrettably conscious, of the fact that the expedience of coming directly to the judge to make a complaint and thereby indirectly securing an adjournment of a case may tend to interfere with and retard the speedy and swift dispensation of justice.

I have, however, complete faith in the integrity and the responsibility of the Bar and have every hope that this privilege will not be abused. However, should I find any tendency of its abuse, it will undoubtedly be a source of pain and disappointment, but in such a event, I will have no hesitation in ordering costs to be paid by the counsel concerned personally. There seems no restriction in ordering costs to be paid to the court in cases where there is a clear abuse of the process of court which results in delayed justice and is inspired by a motive which is anything but oblique. (*Public Prosecutor v Tanggaah* [1972] 1 MLJ 207 at p 209).

[8] This court has also considered that the powers of a civil revision conferred by ss 32 and 33 of the Courts of Judicature Act 1964 and its reviewing powers against the decision of the lower courts must be exercised sparingly and only where the interest of justice so demands and not as a convenient form of 'backdoor appeal'. (See *Teo Hee Heng v Public Prosecutor* [2000] 3 SCR 168 at p 172 and s 34 of the Courts of Judicature Act 1964).

[9] In *Mohd Dalha bin Redzwan & Anor v Datuk Bandar, Dewan Bandaraya, Kuala Lumpur* [1995] 1 MLJ 645 at p 655, His Lordship Gopal Sri Ram JCA reiterated:

Save in exceptional case and for very good reasons, there can be no resort had by a party to the revisionary jurisdiction of the High Court when the decision complained of is appealable and no appeal has been lodged. (See *Dorai Manickam alias Davies v Rex* [1937] MLJ 209).

[10] This court has taken into consideration that the exercise of the court's revisionary powers is a matter of discretion and that discretion will not usually be exercised in favour of the 'aggrieved party' who has not taken steps to file the notice of appeal within the statutory period. However, in the instant case, the notice of appeal which was filed by the defendant's solicitors within the limited period for appeal was rejected by the learned magistrate and returned to the defendant's solicitors for the reasons stated above. Therefore, the facts and circumstances in the instant case have to be distinguished to justify in the exercise of the courts reversionary powers.

[11] The question posed by the appellant/defendant's counsel at the hearing of the civil revision was, whether the learned magistrate could reject the notice of appeal filed by an aggrieved party to appeal to the High Court against his decision on the ground that:

(a) the amount in dispute or value of the subject matter is below RM10,000; and

(b) there is no question of law for the High Court to decide.

[12] The learned counsel for the appellant/defendant submitted as follows:

(i) that so long as the notice of appeal contains question of law arising out of the decision of the lower court to be determined by the High Court, the lower court cannot reject the notice of appeal;

(ii) in the instant case, learned counsel submitted that the said notice of appeal intact contained ten questions of law;

(iii) in support of her contention, the following cases were relied on:

(i) *Sulaiman bin Mohamad v Malayan Banking Bhd* [1992] 2 MLJ 116

(ii) *Zain Azahari bin Zainal v Wearne Brothers (1983) Sdn Bhd* [1997] 5 MLJ 39

(iii) *Tiang Kwong Ee v Ing Kai Hong (S) Sdn Bhd* [2000] 5 MLJ 756

(iv) *KC Chan Brothers Development Sdn Bhd v Tan Kon Seng & Ors* [2001] 6 MLJ 636

(iv) in the instant case, a copy of the notice of appeal which was filed at the magistrate's court, Ipoh was forwarded to the High Court, Ipoh and the appeal has already been registered at the High Court, Ipoh vide civil appeal no 11–66–2003;

(v) the learned magistrate had erred in law when His Honour rejected the notice of appeal;

(vi) the appeal which is registered at the High Court, Ipoh should proceed for hearing.

[13] On the other hand, the learned counsel for the respondent/plaintiff submitted as follows:

(i) an appeal is said to be at the High Court only when the record of appeal is received by the High Court and he referred to *Sulaiman bin Mohamad v Malayan Banking Bhd* [1992] 2 MLJ 116 wherein His Lordship Lamin J (as he then was) said:

> The question is at what stage can an appeal be said to 'lie to the High Court' as required under s 28 of the Act. *I say that an appeal is said to 'lie to the High Court' when the registrar of the High Court receives the record of appeal and enters it in a list of appeal* (O 55 r 1 of the RHC). (Emphasis added.)

> Section 28 of the Act states that 'no appeal shall lie to the High Court' *meaning that no record of appeal shall be received by the registrar of the High Court where the amount in dispute 'is ten thousand ringgit or less except on a question of law'. In other words the registrar of the High Court shall not have sight of the appeal record if any one of the two qualifications is not fulfilled. By implication therefore the registrar of the court below must have the power to decide whether the notice of appeal on the face of it carries any of the qualifications so that it can be*

accepted to be filed. Without the notice of appeal the record of appeal will be incomplete. Learned counsel for the applicant contended that the registrar of the court below cannot look at s 28 and he therefore cannot reject a notice of appeal. The simple answer to that, is that, it makes nonsense of s 28. (Emphasis added.)

The registrar of the lower court has the power to reject the notice of appeal.

(ii) the application by the defendant's solicitors for this court to revise the decision of the learned magistrate who rejected the notice of appeal should be dismissed with costs as the magistrate has the power to reject the notice of appeal if the amount in dispute or the value of the subject matter is less than RM10,000 and there is no question of law.

OBSERVATION BY COURT

[14] However, it is most disturbing to note from the submissions of both learned counsels that the recent decision of the Court of Appeal in *Neoh Choo Ee & Co Sdn Bhd v Vasalamany a/l Govindasamy & Ano*r [2004] AMR 357 which was already reported at the time of hearing this civil revision and released to the courts and solicitors was not cited or referred to this court. As both counsels were not aware of the decision of the Court of Appeal in *Neoh Choo Ee & Co Sdn Bhd*, this court adjourned the matter for both counsels to read up the case and submit further on the powers of the lower court to reject the notice of appeal and whether the notice of appeal must infact contain question or questions of law.

[15] When the case was recalled for both counsels to submit, the appellant/defendant's counsel submitted as follows:

(1) in order to determine the issue of law, the High Court must peruse the memorandum of appeal and the record of appeal and she applied to this court to give directions to proceed with the appeal and relied on *Neoh's* case.

[16] The respondent/plaintiff's counsel submitted as follows:

(i) the issue in *Neoh*'s case was, whether the notice of appeal must state the question of law pursuant to s 28 of the Courts of Judicature Act 1964 and *Neoh*'s case must be distinguished;

(ii) in the instant case, the notice of appeal has stated the question of law;

(iii) the lower court has the power to reject the notice of appeal;

(iv) the case in *Sulaiman* was not referred by the Court of Appeal in *Neoh*'s case and therefore has not been overruled;

(v) *Sulaiman*'s case was not referred in *Neoh*'s case because the issue was different;

(vi) since the notice of appeal has stated question of law, the learned magistrate has the power to decide whether the appeal raises question of law pursuant to s 28(1) of the Courts of Judicature Act 1964;

(vii) *Sulaiman*'s case is binding on the lower courts and the learned magistrate has the power to decide on the question of law raised in the notice of appeal;

(viii) the magistrate has the power to reject the notice of appeal if there is no question of law.

[17] In reply the appellant/defendant's counsel submitted as follows:

(i) it is for the High Court to decide whether the appeal raises question of law and relied on the case in *KC Chan Brothers Development Sdn Bhd v Tan Kon Seng & Ors* [2001] 6 MLJ 636 Ramli Ali JC (as he then was) said:

> Thus, based on the above finding, it is clear that the amount in dispute or the value of the subject matter in all the 26 appeals before this court is below RM10,000. It is also clear that by virtue of ss 27 and 28(1) of the Act, the High Court has no jurisdiction to hear these appeals except on a question of law. This is a question of jurisdiction which must be complied with strictly. It goes to the very core of the court's power in dealing with the appeal. Non-compliance with the provisions is fatal and would nullify the appeal It is not a mere irregularity which can be cured by any other existing rules. It is a vital question to be determined and decided by the court at the beginning of the proceeding whether or not the respondent or any other party has raised it. The fact that the respondent does not raise the issue at the beginning of the proceeding does not mean that the court has the jurisdiction to hear the appeal even though the conditions set under s 28(1) of the Act are not fulfilled.
>
> That being the case, *it is necessary at this stage for this court to be satisfied that the appeal is only on a question of law, ie it involves issue on question of law raised by the appellant/defendant to be determined and decided by this court*. It only covers issues on questions of law alone, nothing else. (Emphasis added.)

Issues involving question of fact or that relate to the application of the law to the facts are clearly outside the jurisdiction of this court (see *Mohamad Safuan Bin Wasidin & Anor v Mohd Ridhuan bin Ahmad (an infant)* [1994] 2 MLJ 187 and *Tiang Kwong Ee v Ing Kai Hong (S) Sdn Bhd* [2000] 5 MLJ 756).

> For that purpose, the court has to scrutinize the notice of appeal as well as the memorandum of appeal to see whether any question of law has been raised by the appellant. There must be some form of indication (ie general indication) in the notice of appeal as well as the memorandum of appeal that a question of law has been raised. It need only be in general and need not be specific. In *Sulaiman Bin Mohamad v Malayan Banking Bhd* [1992] 2 MLJ 116, Lamin J (as he then was) heId at p 119:
>
> > I am of the view that in the case of an appellant intending to appeal on a question of law, the notice of appeal in Form 140 must state at least in general form the question or questions of law that he wishes to appeal on.

A CIVIL APPEALS FROM MAGISTRATE'S COURT

(SECTION 28(1) OF THE COURTS OF JUDICATURE ACT 1964)

[18] Before this court decides on the questions posed in this civil revision, it is important to state that all the decisions of the High Court in reference to s 28(1) of the Courts of Judicature Act 1964 had followed *Sulaiman*'s case except for *Kannaya & Anor v Teh Swee Eng* [1994] MLJ 508. In other words, all the High Court cases since the decision in *Sulaiman*'s case have decided that the notice of appeal in Form 140 must state generally the question or questions of law that a party wishes to appeal upon.

This court is of the view that the contention of learned counsel for the plaintiff that since *Sulaiman*'s case is not referred by the Court of Appeal in *Neoh*'s case, it would mean that *Sulaiman*'s case has not been overruled and is still considered good law is misplaced. Infact, it would appear there is a misreporting of the name of the parties in [1991] 3 CLJ 289 and [1992] 2 MLJ 116 as both the grounds of judgment are identical and contains the same judgment dated 19 September 1991 in respect of Kuantan High Court originating summons No 25–2 of 1991 by the same judge His Lordship Lamin J (as he then was). The only difference is that in [1991] 3 CLJ 289 the name of the parties have been stated as *Malayan Banking Bhd v Syed Ali bin Mohsin* whereas in [1992] 2 MLJ 116 the name of the parties have been stated as *Sulaiman bin Mohamad v Malayan Banking Bhd*. In view of the fact that both the grounds of judgment in *Malayan Banking Bhd v Syed Ali bin Mohsin* [1991] 3 CLJ 289 and *Sulaiman bin Mohamad v Malayan Banking Bhd* [1992] 2 MLJ 116refer to the same judgment, this court is of the view that the fact *Sulaiman bin Mohamad v Malayan Banking Bhd* [1992] 2 MLJ 116 is not referred in *Neoh*'s case makes no difference as the Court of Appeal have considered the same judgment which is reported as *Malayan Banking Bhd v Syed Ali bin Mohsin* [1991] 3 CLJ 289 which is also the same grounds of judgment reported in *Sulaiman bin Mohamad v Malayan Banking Bhd* [1992] 2 MLJ 116.

[19] Be that as it may, in following faithfully and in accordance with the doctrine of judicial precedent, this court is of the view first, it is crystal clear from the decision of the Court of Appeal in *Neoh Choo Ee & Co Sdn Bhd v Vasalamany a/l Govindasamy & Anor* [2004] AMR 357 that the notice of appeal filed at the lower court by an aggrieved person pursuant to O 49 of the Subordinate Court Rules 1980 need not set out the question or questions of law which is necessary for the appeal as the notice of appeal which was filed is in compliance with the statutory Form 140 of the Subordinate Court Rules 1980. Accordingly, the *ratio decidendi* in *Sulaiman*'s case that an appellant must state the question or questions of law in the notice of appeal for the registrar of the lower courts or the magistrate to decide whether there is a question of law to appeal cannot be sustained. Secondly, the learned magistrate cannot

himself determine question or questions of law posed against his own decision because his decision in the instant case was made upon hearing of the evidence and full arguments on the facts and the law which was applied to the facts. Thirdly, upon giving his decision on the merits of the case, the learned Magistrate is *functus officio* to decide question or questions of law posed to determine his own decision after he had delivered his decision upon full trial. (See *Hock Hua Bank Bhd v Sahari bin Murid* [1981] 1 MLJ 143).

[20] It is important to observe that the statutory provision under s 28(1) of the Courts of Judicature Act 1964 does not state there is absolutely no right of appeal or an aggrieved party is barred from appealing to the High Court against the decision of the magistrate's court where the amount in dispute is RM10,000 or less but instead it contain a significant qualification being that an appeal shall lie to the High Court if it is on a question of law. In view of this said qualification, the Court of Appeal in *Neoh Choo Ee & Co Sdn Bhd v Vasalamany a/l Govindasamy & Anor* has cleared the path to an aggrieved party to file the notice of appeal at the magistrate's court without setting out any question or questions of law in the notice of appeal and to let the High Court decide whether the appeal involved any question or questions of law. Therefore, it is incumbent on the appellant to establish at the appeal stage that he has the right of appeal as it involved question or questions of law.

[21] It *R v West Kent Quater Sessions Appeal Committee* [1951] 2 All ER 728 at p 730, Lord Goddard said:

> It is most elementary that no appeal from a court lies to any court unless there is a statutory provision which gives a right to appeal. The decision of every court is final if it has jurisdiction unless an appeal is given by statute.

[22] In the circumstances, this court has no other alternative but to faithfully follow the decision of the Court of Appeal in *Neoh*'s case where His Lordship Gopal Sri Ram JCA said:

> *The section does not say that the notice of appeal should expressly state the questions of law. Neither does O 49 of the Subordinate Court Rules 1980 and O 55 of the Rules of High Court 1980.* We therefore find that there is nothing wrong with the notice of appeal lodged by the appellant with the High Court. It conforms with the statutory form provided by the rules of court. It has not prejudiced the respondents in any way. Indeed they made no complaint about it in the first place. It was the High Court which took the point *suo motu*. That shows there was no prejudice. If there had been, counsel for the respondents would surely have complained. *We are therefore, with respect, unable to agree with the learned judge that a notice of appeal in Form 140 of Subordinate Court Rules 1980 should set out the question or questions of law which the appeal involves. We agree with Mr A Suppiah of counsel for appellant that points of law will in the usual way be taken in the memorandum of appeal and it is to that document that the High Court ought to have resort. If upon reading the memorandum of appeal and the record of appeal as a whole the High Court comes to the conclusion that the appeal does not involve a question of law, then it would no doubt deal with the point in the ordinary way, when the appeal is called on for hearing.* (Emphasis added.)

But it must be said at once in fairness to the learned judge that he was persuaded to take the view he took by two decisions of the High Court, In *Malayan Banking Bhd v Syed Ali Bin Mohsin* [1991] 3 CLJ 289, Lamin Yunus J (as he then was) said:

> I am of the view that in the case of an appellant intending to appeal on questions of law, *the notice of appeal in Form 140, must state at least in general form the question or questions of law that he wishes to appeal on.* (Emphasis added.)

Now it is plain that the views expressed in those two cases do not coincide with the opinion we have expressed a moment ago. In our opinion those cases were wrongly decided and should no longer be considered good law. For otherwise, the court would be imposing a condition of appeal that written law does not prescribe. (Emphasis added.)

Ordinarily, therefore this appeal should be allowed and the matter remitted to the High Court to consider the appeal before it on merits. (Emphasis added.)

JUDICIAL PRECEDENT (DOCTRINE OF *STARE DECISIS*)

[23] As a matter of judicial comity, this court would usually follow the decision of its brethren of equal jurisdiction unless this court is convinced that that judgment cannot stand in law or cannot in its own be sustained with the decision of the Court of Appeal or the Federal Court. Nevertheless, and although the decision of His Lordship Lamin J (as he then was) in *Sulaiman*'s case and *Malayan Banking Bhd v Syed Ali bin Mohsin* [1991] 3 CLJ 289) have stood unchallenged for about 14 years, with respect, this court has to still decline to follow that decision and *Mohamad Safuan bin Wasidin & Anor v Mohd Ridhuan bin Ahmad (an infant)* [1994] 2 MLJ 187 and all other decisions of the High Courts which had followed *Sulaiman*'s case on the interpretation of s 28(1) of the Courts of Judicature Act 1964 to be read with O 49 of the Subordinate Court Rules 1980 and O 55 of the Rules of the High Court 1980 under the doctrine of judicial precedent and which are irreconcilable with the decision of the Court of Appeal. (See *Young v British Aeroplane Co Ltd* [1944] 2 All ER 293, *Re House Property and Investment Co Ltd, Re* [1953] WLR 1034 at p 1038, *PN Mohamed Ibrahim v Yap Chin Hock & Anor* [1954] MLJ 127 and *Sundralingam v Ramanathan Chettiar* [1967] 2 MLJ 211). The decision of the Court of Appeal prevails over all other decisions of the High Court to the doctrine of judicial precedent. (See *Huddersfield Police Authority v Watson* [1947] All ER 193 at p 196).

[24] It is important for this court to remind itself that decisions of the Court of Appeal and the Federal Court on questions of law and principles of law are strictly binding on this court as to propositions which is expressly affirmed unless the proposition of law does not form part of the *ratio decidendi* or is an opinion or an illustration. (See *Osborne v Rowlett* (1880) 13 Ch D 774 and *Close v Steel Co of Wales Ltd* [1962] 2 All ER 953). Judicial hierarchy must be observed in the interests of finality and certainty of the law and for orderly development of legal rules and for the courts and lawyers to regulate their affairs otherwise there is bound to be a state of uncertainty which the principle of precedent is

designed to prevent. (See *London Tramways v London Country Council* [1895] AC 375, *Tunde Apatira & Ors v Public Prosecutor* [2001] 1 MLJ 259 at p 264). If this court is not able or decline to follow the final decision of the two Superior Courts, the Court of Appeal and the Federal Court, it can only attempt to do so if the facts in those cases are distinguishable and if those facts were the basis of the decision in the cases. This court is of the view that any contrary view by this court would give rise to an unacceptable degree of 'judicial schizophrenia' and could tantamount to misconduct or insubordination. Even if there are a series of decisions of the High Court which have faithfully followed each other in the interpretation of a statutory provision, this court is still bound by the decision of the Court of Appeal in conformity with the doctrine of judicial precedent or *stare decisis*). (See *All Persons in Occupation of the House and the wooden stores erected on a portion of land held under grant No 26977 for Lot 4271 in the township of Johor Bahru, Johor v Puncak Klasik Sdn Bhd* [1996] 4 MLJ 533 at p 541). Accordingly, this court ought to follow the principle enunciated in *Neoh*'s case where the question is one which turns on the construction of a statute or the rules of court and any contrary view or stand taken by this court will lead to chaos and judicial indiscipline if *stare decisis* is not maintained. Indeed, there will be judicial revolution for it will marks a revulsion from the sacrosanctity which the courts in this jurisdiction have long observed the doctrine of binding precedent. In *Periasamy s/o Sinnappan & Anor v Public Prosecutor* [1996] 2 MLJ 557 at p 582, His Lordship Gopal Sri Ram JCA said:

> We may add that it does not augur well for judicial discipline when a High Court judge treats the decision of the Supreme Court with little or no respect in disobedience to the well-entrenched doctrine of *stare decisis*. We trust that the occasion will never arise again when we have to remind High Court judges that they are bound by all judgments of this court and of the Federal Court and they must, despite any misgivings a judge may entertain as to the correctness of a particular judgment of either court, apply the law as stated therein.
>
> (See *Mirehouse v Rennell* 6 ER 1015, *Cooper v Southern Portland Cement Ltd* [1972] 46 ALJR 302, *Cassell & Co Limited v Broome & Anor* [1972] AC 1027, *Miliangos v George Frank (Textiles) Ltd* [1975] 2 WLR 555 at p 564, *Public Prosecutor v Datuk Tan Cheng Swee & Anor* [1980] 2 MLJ 276 at p 277, *Kathavarayan v Ng Sup Moi & Anor* [1987] MLJ 246 at p 250, *Co-operative Central Bank Ltd (In receivership) v Feyen Development Sdn Bhd* [1997] MLJ 829 at pp 836–837, *Dalip Bhagwan Singh v Public Prosecutor* [1997] 4 CLJ 645 and *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang and Anor v Utra Badi a/l K Perumal* [2001] 2 MLJ 417).

[25] However, this court is of the view that the learned magistrate in rejecting the notice of appeal and deciding on the ten questions of law raised in the notice of appeal, with respect, first, he was functus officio, secondly, the learned magistrate cannot rule that there is no question of law to be determined by the High Court against his own decision as he cannot decide for the High Court as to whether the appeal which arose out of his decision raises a question of law as that could only be determined by the High Court. (See *Austral Amalgamated*

Tin Bhd and anor appeal v Abdul Wahab bin Kopon & Ors and anor appeal [2004] 3 AMR 298). Even assuming that the provision in s 28(1) of the Courts of Judicature Act 1964 is unclear as to who has to decide i.e. whether the lower court or the High Court on the question of law, that ambiguity even if it exist, in accordance with the rules of construction, must be decided in favour of the aggrieved party ie the question of law has to be decided by the High Court at the outset of the appeal and cannot be determine by the magistrate himself for reasons stated above. Competency or incompetency of the appeal on the ground that the appeal does or does not involve question or questions of law is for the High Court to decide and the respondent could or is at liberty to raise preliminary objection at the outset of the hearing of the appeal. In the circumstances, this court is satisfied that the defendant has been wrongly deprived of his right and opportunity of bringing his appeal to the High Court and substantial justice has been denied to him. Accordingly, it is for the judge of the High Court to rule on the preliminary objection based on the memorandum of appeal as to the competency or incompetency of the appeal and it is not for the lower court, be it a magistrate or a registrar to reject the notice of appeal or to decide on the question or questions of law as required under s 28(1) of the Courts of Judicature Act 1964. (See *Saadian bte Karim v Ong Ting Chai* [1996] 5 MLJ 646 at p 662–663, *Pandan Maju Sdn Bhd v Dulon Industries Sdn Bhd* [1996] 3 AMR 3151 at p 3155 and s 33 Courts of Judicature Act 1964). In the circumstances, the learned magistrate had erred in law in rejecting the notice of appeal and the notice of appeal has to be reinstated. Further more, the Court of Appeal has expressly stated that the question or questions of law as required under s 28(1) of the Courts of Judicature Act 1964 is not required to be stated in the notice of appeal and that question of law must be left to the High Court to decide at the appeal stage whether the appeal infact involved question of law.

[26] Be that as it may, as the learned magistrate has stated in his said letter dated 8 December 2003 that there was no question of law involved for the High Court to decide, this court wishes to make it clear that out of the 10 questions which has been raised as point of law in the notice of appeal, there are only three (3) questions which have raised questions of law ie No 7e, 8 and 10 as stated in the notice of appeal and the rest of the questions posed relate to a finding of fact by the learned magistrate. Ordinarily the question or questions of law relating to the appeal pursuant to s 28(1) of the Courts of the Judicature Act 1964 will be decided at the appeal stage. (See *Neoh Choo Ee & Co Sdn Bhd v Vasalamany a/l Govindasamy & Anor* [2004] AMR 357.) However, in view of the peculiar circumstances of this case, this court has decided to determine at this revision proceedings whether the 10 questions included in the notice of appeal involved question or questions of law. It is important to state at this stage that whatever this court has said so far and the three (3) questions of law framed has nothing to do with the merit of the appeal and whether the appeal should succeed or fail as it is not a function of this court

to decide in this revision proceeding. The three (3) questions of law against the decision of the learned magistrate which had allowed the plaintiff's claim are as follows:

(i) Question No 7

Samada majistret telah betul-betul mempertimbangkan keterangan SP2 (isteri responden) atas fakta-fakta berikut:

e) Majistret yang bijaksana juga gagal mempertimbangkan bahawa hanya terdapat seorang saksi bagi responden iaitu SP2 (isteri responden) suatu 'interested witness' dan tiada lagi 'saksi bebas' (independent witness) yang datang memberi keterangan.

(ii) Question No 8

Adakah dokumen perjanjian persahabatan yang ditandakan sebagai 'ID–2' suatu dokumen 'On Demand' iaitu suatu promissory note yang perlu disetem sebelum atau pada masa ditandatangani seperti yang diperuntukkan didalam Akta Setem 1949 dan apakah kesannya sekiranya ianya tidak disetemkan.

(iii) Question No 10

Samada majistret yang bijaksana telah mempertimbangkan fakta bahawa dokumen-dokumen ini merupakan dokumen yang diguna oleh pemberi pinjam wang berlesen semasa menentukan kes ini.

[27] In the circumstances, the order of the learned magistrate which rejected the notice of appeal is set aside. The notice of appeal dated 19 November 2003 filed by the appellant/defendant's solicitors and rejected by the learned Magistrate is to be refiled at the magistrate's court, Ipoh or a fresh notice of appeal is filed within 14 days from the date of this order on/or before 18 February 2005. The learned magistrate is directed to give his grounds of decision within eight weeks from the date of filing the notice of appeal and to comply with the requirements of O 49 of the Subordinate Court Rules 1980.

Order accordingly.

Reported by Peter Ling